

SUPPORT FOR THE AMENDMENT

Support for the amendment to claim 1 is found in claim 4 as originally presented and on page 8, lines 23 through page 9, line 13 of the specification. Support for claim 21 is found on page 9, lines 21-25 of the specification. No new matter would be added to this application by entry of this amendment.

Upon entry of this amendment, claims 1-3, 5-16 and 18-21 will now be active in this application.

REQUEST FOR RECONSIDERATION

The claimed invention is directed to a hair cleansing composition comprising an alkyl ether sulfate surfactant comprising 30-45 wt.% of the sulfate of formula I wherein $n=0$, 18-27 wt.% of the sulfate wherein $n=1$, and 10-20 wt.% of the sulfate wherein $n=2$, the balance wherein n is 3 or greater and the sum of sulfates wherein $n=0-2$ is 70 wt.% or greater and at least one silicone selected the group consisting of dimethylpolysiloxanes and amino-modified silicone. Applicants have discovered that such a distribution of alkyl ether sulfate surfactants and silicone provides for good foaming properties in a hair cleansing composition. Such a hair cleansing composition is nowhere disclosed or suggested in the cited references of record.

Applicants wish to thank examiner Channavajjala for the helpful and courteous discussion held with their U.S. representative on September 1, 2009. At that time, applicants' U.S. representative argued the criticality of combining the claimed sulfated surfactant with a silicone compound in terms of foaming and performance and discussed presentation of evidence in support of same. The following is intended to expand upon the discussion with the examiner.

The rejections of claims 1-3, 5-16 and 18 under 35 U.S.C. §102(b) over Flick as evidenced by Orion Chemique which should have read translation of the Brief submitted by European Patent Office by Cognis GmbH, of claims 4 and 17 under 35 U.S.C. §103(a) over Flick as evidenced by Cognis in view of Bartz 5, 417,776, and of claims 19 and 20 under 35 U.S.C. §103(a) over Flick alone are respectfully traversed.

Flick fails to disclose the combination of sulfated surfactant with silicone as claimed (page 3, paragraph 2 of outstanding official action). Applicants note that the claims have been amended to recite the presence of at least one of two specific silicone

compounds. Since the cited reference fails to disclose or suggest a silicone compound, the claimed invention is not anticipated by this reference.

The examiner cites to Bartz for a disclosure of a silicone compound in a hair conditioning shampoo composition containing sulfated surfactants and asserts that it would have been obvious to use the silicone of Bartz in combination with the sulfated surfactant of Flick in the preparation of a hair care composition.

Notwithstanding the lack of evidence of the sulfate distribution of Flick, even if the sulfate distribution of Flick were as asserted and even if there were motivation to combine a silicone compound with the sulfated surfactant of Flick such combination would fail to provide any expectation of an enhancement in foaming speed, lubricity and luster and manageability.

As evidence of such enhancements, applicants have conducted additional experiments, submitted herewith in the declaration of Dr. Takeshi Kaharu, a researcher for Kao Corporation, the assignee of the above-identified application. Applicants have assessed foaming speed, lubricity and luster and manageability for a composition containing sulfated surfactant and silicone with a composition in which the sulfated surfactant has a sulfate distribution as claimed, in combination with a silicone. For the examiner's convenience the data is reproduced below.

Component	Example		Comparative Example		
	Add Ex 1	Add Ex 2	Add Comp Ex 1	Add Comp Ex 2	Add Comp Ex 3
Sulfate 1	12	12	12		
Comparative Sulfate 3				12	12
Dimethylpolysiloxane	1			1	
Amino-modified silicone		0.5			0.5
Myristyl alcohol	1	1	1	1	1
Ethylene glycol distearate	3	3	3	3	3
Cationic hydroxyethyl cellulose	0.2	0.2	0.2	0.2	0.2
Cationic guar gum	0.3	0.3	0.3	0.3	0.3
Malic acid	0.75	0.75	0.75	0.75	0.75
Purified water	Balance	Balance	Balance	Balance	Balance
pH (when diluted to 20 times the weight with water, 25°C)	3.7	3.7	3.7	3.7	3.7
Foaming speed	20	20	15	10	10
Lubricity of foam	23	20	13	15	13
Luster and manageability	20	20	10	18	15

Dimethylpolysiloxane and amino-modified silicone are the same components in the specification

Five experts evaluated each composition

Each composition was evaluated by the sum of their scores

Foaming speed	Lubricity of foam	Luster and manageability
5 very fast foaming	very lubricious	very good
4 fast foaming	lubricious	good
3 a little fast foaming	somewhat lubricious	somewhat good
2 a little later foaming	not so lubricious	not so good
1 late foaming	not lubricious	not good

Add. Comparative example 1, having a sulfate distribution within the claims demonstrated somewhat average to below average evaluations of foaming speed, lubricity of foam and luster and manageability.

Add. Comparative examples 2 and 3 having a sulfate distribution outside the claims but used in combination with a silicone compound as claimed demonstrated somewhat average to below average evaluations of foaming speed, lubricity of foam and luster and manageability.

In contrast, Add examples 1 and 2 demonstrated enhanced evaluations of foaming speed, lubricity of foam and luster and manageability. The data suggests that selection of a sulfated surfactant as claimed combined with a silicone provides enhancements in foaming speed, lubricity and luster and manageability as compared to combination of a silicone with a sulfated surfactant outside the scope of the claims.

Enhancements in foaming speed, lubricity and luster and manageability resulting from the claimed combination are simply not suggested by the cited references. Flick simply describes a sulfated surfactant without any suggestion as to enhancements in foaming speed, lubricity and luster and manageability. Bartz simply describes a hair conditioning shampoo which combines a sulfated surfactant with a silicone. There is no suggestion as to any enhancements in foaming speed, lubricity and luster and manageability when the claimed sulfated surfactant is combined with a silicone. Applicants have provided a comparison against the relied upon disclosures of the closest cited art of Bartz which combines a generic sulfated surfactant with a silicone and against the sulfated composition of Flick and demonstrated enhancements in foaming speed, lubricity and luster and manageability resulting from selection of the sulfate distribution in combination with a silicone. As the cited art fails to discuss any enhancements in foaming speed, lubricity and luster and manageability nor illustrate the claimed combination of sulfated surfactant and silicone, the

discovery of enhancements in foaming speed, lubricity and luster and manageability are not suggested by the cited art of record.

In view of applicants' demonstration of enhancements in foaming speed, lubricity and luster and manageability the claimed invention is not rendered obvious by the cited references and withdrawal of the rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a) is respectfully requested.

Finally, applicants respectfully submit that the current rejection of claims 1-3, 5-16 and 18 as anticipated, which is modified to reference the proceedings before the European patent office, is **a new ground of rejection** relative to the office action of October 15, 2008, to which applicants have not had a full and fair opportunity to respond.

The current rejection is based on the combination of Flick, Orion Chemique, **and** the Cognis EPO submission. The prior rejection was only based on Flick and Orion Chemique. To even pretend that the two rejections are equivalent is a complete travesty. While the examiner recognizes that the previous rejection **should** have cited to Cognis, the prior rejection simply did not. No amount of pretending can cure this defect. The proper procedure would have been to issue a new ground of rejection in a non-final office action which would allow the examiner the opportunity to clearly articulate her reliance on the art as well as the aspects of the reference being relied upon. The examiner's omission has denied applicants a full and proper opportunity to address the Cognis EPO submission. The M.P.E.P. requires the examiner to clearly detail the basis for the rejection. Copies of cited reference are to be provided to applicants, and proper citation of such references are to be made on a PTO-892 form. By referencing to references not properly cited, applicants were required to expend valuable resources in a vane attempt to ascertain the examiner's true intent. In absence of clear reliance on the Cognis submission, applicants were denied due process and therefore the current rejection is not properly made final.

Furthermore, applicants have previously requested that the examiner provide a copy of Orion Chemique and to properly cite same on a PTO-892 form. The current rejection continues to reference Orion Chemique, but no citation has been provided. Thus, the current rejection based on Flick Orion Chemique and Cognis is not proper as there is no copy of Orion Chemique of record. No rejection over Orion Chemique can be maintained. Should the examiner choose to maintain her rejection the examiner is respectfully requested to issue a rejection solely over Flick and Cognis and afford applicants the opportunity to address same. Moreover, if, in the future, should the examiner wish to actually rely on Orion Chemique, such ground of rejection would be a new ground of rejection, and applicants would like to be afforded a full and clear opportunity to address such issues.

Applicants submit this application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.

Norman F. Oblon



Richard L. Chinn, Ph.D.
Attorney of Record
Registration No. 34,305

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 07/09)